

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-330

DATE OF INTRODUCTION:

January 8, 2002

SPONSOR:

Assemblyman O'Toole

DATE OF RECOMMENDATION:

February 26, 2002

IDENTICAL BILL:

COMMITTEE:

Assembly Commerce and Economic Development

DESCRIPTION:

The Bill would allow urban enterprise zone qualified vendors to charge 3% sales tax on motor vehicles.

ANALYSIS:

This Bill is proposed to amend the Urban Enterprise Zone Act, N.J.S.A. 52:27H-60, et. seq., to allow urban enterprise zone qualified business vendors to charge reduced sales tax on sales of motor vehicles.

This proposal would disrupt the equity of New Jersey's retail auto industry. Car and truck dealers that cannot charge 3% sales tax will be at a great disadvantage. The dealerships located outside the urban enterprise zone would not survive. The demand for vehicles from the urban enterprise zone qualified auto dealers would be substantial, robbing development from elsewhere for the benefit of the urban enterprise zone.

The Bill would also lead to inequitable results in regard to the casual sale of used vehicles which are subject to 6% sales tax. In the urban enterprise zone cities, buyers of privately-sold cars will complain when they have to pay 6% sales tax, compared to paying 3% sales tax for a vehicle from a nearby used car dealer.

Since the sales tax revenue paid to a qualified vendor in an urban enterprise zone is remitted to the municipality and not to the State, the loss of revenue would be substantial. The loss of revenue to the State is enhanced by the fact that motor vehicles are big-ticket items and the largest single block of sales tax revenue for the State. If this proposal were to go into effect, all revenue previously collected on sales of motor vehicles in urban enterprise zones would be lost. Moreover, since the proposal encourages motor vehicle dealers to locate in an urban enterprise zone, the revenue impact could be significantly greater if a large number of dealers relocate and charge 3% tax.

The adoption of this proposal creates a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-state for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax

rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. A constitutional issue may result from vehicles purchased out-of-state for use in the urban enterprise zone. When registering, the State would require sales tax to be paid at the rate of 6%, while the same vehicle purchased at the urban enterprise zone would only be subject to 3% sales tax. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zone Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for transactions involving sales of motor vehicles within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 1

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